

# American Federation of Labor and Congress of Industrial Organizations



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August 24, 2009

Mr. Joseph F. Stoltz  
Assistant Staff Director  
Audit Division  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: Interim Report of the Audit Division on AFL-CIO COPE PCC

Dear Mr. Stoltz:

I am responding on behalf of AFL-CIO COPE PCC to the Interim Report of the Audit Division ("Interim Report"). We address its findings and recommendations in turn.

### **Finding 1. Misstatement of Financial Activity**

AFL-CIO COPE PCC concurs that the referenced cash on hand, receipts and disbursements figures set forth in its 2005 and 2006 reports were inaccurate. Due to the upcoming quadrennial AFL-CIO Convention in mid-September and summer staffing limitations, AFL-CIO COPE PCC has not yet amended its reports, but it will do so by September 30, 2009. AFL-CIO COPE PCC also will adjust the cash balance accordingly on its September 2009 Monthly Report.

### **Finding 2. Transfers Received from Separate Segregated Funds**

AFL-CIO COPE PCC generally concurs with the Interim Report's recitation of the facts, insofar as it addresses the pertinent facts. We refer the Audit Division to the fuller factual exposition set forth in my July 8, 2008 letter ("AFL-CIO Letter") to Audit Manager Tom Hintermister, including its description of the decades-long and openly reported history of the AFL-CIO COPE PCC's collecting agent/joint fundraising arrangements with the separate segregated funds ("SSFs") of various national and international unions that have been affiliated with the AFL-CIO within the meaning of 11 C.F.R. §§ 100.134(h) and 114.1(e)(4).

We also concur with the Audit Division's findings that (1) the Communications Workers of America ("CWA"), the American Federation of Teachers ("AFT") may act as collecting agents for AFL-CIO COPE PCC; and (2) the respective transfers from CWA COPE PCC and AFT COPE to AFL-CIO COPE PCC complied with the timing requirements of 11 C.F.R. § 102.6(c)(4), although we disagree that this regulation applies to these arrangements.

We disagree too with the findings that those arrangements must comply with the rules applicable to pure collecting agents that (1) an affiliated union's SSF either establish a separate transmittal account solely for AFL-CIO COPE PCC contributions or maintain records of underlying contribution receipts that comprise the transfer to AFL-CIO COPE PCC, and (2) the SSF forward all recordkeeping information to AFL-CIO COPE and the latter then report the incoming transfer on Line 11 and itemize individual contributors if, as to itself, they meet the \$200.01 per year threshold.

The AFL-CIO Letter explained our legal and practical contentions concerning these matters, which the Audit Division similarly raised at the exit conference. The Interim Report summarizes some of our contentions and substantively responds only to one, namely, that the transfers are best considered to consist of funds that "are not attributable to any particular individual contributor, but are comprised of an unitemized aggregate of a portion of all of them." AFL-CIO Letter at 7. (The Interim Report's purported quotation of this passage is inaccurate. See Interim Report at 9.)

The Interim Report asserts that 11 C.F.R. §102.6(c)(4) applies with full force to these arrangements but does not address our presentation concerning how their joint fundraising nature affects the analysis. Moreover, none of the purposes cited by the Interim Report for individualized attribution to and reporting by AFL-CIO COPE PCC are "necessary in order to specifically track what amounts are contributed to the respective organizations," as the Interim Report asserts. For, as the AFL-CIO Letter explained, the transfers themselves provide that information because individual CWA/AFL-CIO members authorize *all* of their contributions to be remitted to CWA COPE PCC and then delegate to the two SSFs how to apportion the *total* receipts between them. The Interim Report simply assumes that there is a requirement for specific allocation to AFL-CIO COPE PCC at the individual level, so it asserts that allocation "information" is necessary. We believe that premise is incorrect, as we have explained.

Nor is the information "necessary... to monitor itemization and limitation requirements." See Interim Report at 9. In fact, CWA COPE PCC itemizes *all* joint contributions, and the specific allocation recommended in the Interim Report would, if anything, result in *less* itemization, as the AFL-CIO Letter explained. And, CWA/AFL-CIO members and AFT/AFL-CIO members who contribute to their respective union's SSF *never* contribute separately to AFL-CIO COPE PCC, and none come close to contributing \$5,000 per year at least to CWA COPE PCC itself. For that reason, there is no need for AFL-CIO COPE PCC distinctly to itemize contributors in order to monitor compliance with limitation requirements. In any event, AFL-CIO COPE PCC would

commit to collaborating with its SSF joint fundraising participants to ensure that if AFL-CIO COPE PCC ever receives a contribution from a common contributor it would ensure compliance with the individual \$5,000 per year limit under any theory of allocation between its joint fundraising partner and itself.

Finally, regarding the timelines of the transfers, which the Interim Report also raises, even if that requirement applies the Audit Division has conceded that the 2005-06 transfers complied with it. AFL-CIO COPE PCC would commit that it will accept transfers only if the transferring SSF itself also received at least the transferred amount within the previous 30 days (as both SSFs at issue did during 2005 and 2006).

Accordingly, AFL-CIO COPE PCC declines to accept the Audit Division's recommendations that it amend its "[r]eports covering the audit period and any subsequent periods" -- and, we note that there are no findings as to any "subsequent periods" -- in order to report transfers on Line 11 instead of Line 12 and itemize individual contributors. In that connection, we would also point out that, almost certainly, as a factual matter *no* individual member contributed over \$200.00 "to" AFL-CIO COPE PCC even if the theory of the Interim Report were applied to reallocate contributions between the committees in 2005 and 2006, and, even if the result were to shift some itemization to AFL-CIO COPE PCC, doing so would not provide any public informational benefit. Moreover, it would be a highly burdensome undertaking for those committees to undertake that reallocation at this point.

Again, as we have explained to the Reports Analysis Division and then the Audit division for years now, the arrangements at issue have continued for at least 25 years and have been regularly reported by all participating SSFs, including at least 133 transfers that themselves exceeded the \$5,000 per year limit of 2 U.S.C. §441b(a)(2)(c), and so for that reason alone put both the Commission and the general public on notice that these were not ordinary contributions. And, to our knowledge, these arrangements have *never* elicited a complaint to the Commission by any contributing AFL-CIO member or anyone else. AFL-CIO COPE PCC and the union SSFs have relied upon this longstanding administrative, enforcement, recordkeeping and reporting history. We submit that, absent a change in the governing law, they are entitled to do so and it is manifestly unfair to impose novel requirements now. We respectfully request that the draft Final Audit Report revise the findings and recommendations of the Interim Report accordingly.

Thank you for your consideration.

Yours truly,



Laurence E. Gold  
Associate General Counsel

cc: Richard L. Trumka, Treasurer, AFL-CIO COPE PCC